

On February 14, 2003 appellant, then a 60-year-old supervisor of distribution operations, filed a claim alleging that she sustained an emotional condition due to various incidents and conditions at work. She stopped work on January 15, 2003 and did not return. In an attached statement, appellant indicated that effective January 27, 2003 she was to be reassigned from a

job which met her medical restrictions, necessitated by an April 29, 2002 work injury, to a job which exceeded these restrictions.¹

In a statement dated April 23, 2003, appellant alleged that, between July 2002 and January 2003, Vanessa Bradley, the manager of distribution, subjected her to verbal harassment, maintained a hostile demeanor towards her, ridiculed her job performance and implied that she was incompetent. She claimed that she was often left to make administrative decisions on her own, but then was criticized for her decisions. Appellant asserted that Ms. Bradley was “vague in her supervision and direction” and never provided her with service goals or work expectations. She asserted that Ms. Bradley would often discuss her in weekly meetings with coworkers when she was not present. Appellant claimed that on January 15, 2003 Ms. Bradley instructed her to attend a meeting on that date for a mid-year performance evaluation without giving her prior notice or a chance to prepare for the meeting. She claimed that Ms. Bradley asked “What is this?” in a hostile tone when she placed a tray containing silver dollars on the floor near her desk and noted that she explained that the dollars came from a registered mail package which had been tampered with. Appellant alleged that Ms. Bradley shouted at her in a demeaning manner and asked her why she was late and why she had not given notice that she would be late.² She claimed that Ms. Bradley told her she had no interpersonal skills and would be scheduled for interpersonal relations classes; she asserted that this action was unjustified as she had established professional relationships with other employees.

Appellant alleged that Ms. Bradley had not counseled her or indicated there was a problem prior to the January 15, 2003 meeting and that she did not review the goals of her prior work assignment. She stated that Ms. Bradley further advised her at the meeting that effective January 27, 2003 she would be reassigned to the Atlanta process and distribution center to work on operation 150.³ Appellant indicated that she could not stand for eight hours at a time as required by the job and Ms. Bradley told her that she could request light-duty work. She asserted that Ms. Bradley told her that she requested too much personal leave and she responded that she had received approval to use leave for a medical appointment. She claimed that Ms. Bradley never allowed her to participate in weekly meetings with coworkers at the main facility. Appellant alleged that Ms. Bradley commonly subjected her to profanity during telephone conversations, including instances when she requested that additional staff be provided. She alleged that on October 25, 2002 Ms. Bradley asked, “When are you leaving...?” in a hostile manner. Appellant asserted that she responded, “At 4:30 p.m.” and Ms. Bradley stated in loud voice, “You know damn well what I am asking. When are you retiring? You are such a smart ass.”

¹ On April 29, 2002 appellant sustained a work-related left knee strain.

² Appellant indicated that she explained to Ms. Bradley why she was late. She noted that just prior to the meeting she spent time completing paperwork regarding the silver dollars and advised officials about a suspicious person she viewed on the premises. Appellant also indicated that she encountered traffic on the way to the meeting and did not have a mobile telephone to call Ms. Bradley.

³ She indicated that Sara Mitchell, another supervisor who was present, asked her whether she had ever worked on operation 150.

In a statement dated April 4, 2003, Ms. Bradley described her working relationship with appellant. She asserted that appellant displayed hostility and negativity at the January 15, 2003 meeting. Ms. Bradley claimed that appellant threw a tray on the floor near her desk and hastily replied, "Money," when asked about its contents. She asserted that appellant never advised her that she was experiencing stress and claimed that appellant's job did not involve working overtime or dealing with staffing shortages or extra demands. Ms. Bradley indicated that appellant applied for a light-duty job in January 2003 but it was determined that no work was available for her within her restrictions.⁴ In a statement dated February 21, 2003, Ms. Mitchell asserted that, when Ms. Bradley asked appellant on January 15, 2003 why she was late for the meeting, she responded in a "negative" tone, "Well, I [a]m here now." She claimed that appellant threw a tray on the floor near Ms. Bradley and when asked what was inside she replied, "Money," in a "nasty" tone. Ms. Mitchell asserted that, when Ms. Bradley told appellant that she requested too much personal leave, she replied, "Is that right?" in a "very unprofessional tone."

The record contains a March 23, 2003 note in which Dr. Angela P. Shannon, an attending Board-certified psychiatrist, noted that appellant reported experiencing stress due to harassment by the employing establishment. Dr. Shannon diagnosed depression with a need to rule out bipolar disorder. In a note dated January 15, 2003, a physician with an illegible signature stated that appellant reported stress at work and indicated that she should be off work from January 15 to 27, 2003.

By letter dated March 25, 2003, the Office requested that appellant submit additional factual and medical evidence in support of her claim. She submitted documents regarding her work duties and her physical condition. In a note dated January 15, 2003, Dr. Lisa Welch, an attending Board-certified internist, stated that appellant had arthritis in both knees and could not stand for periods greater than two hours. In a note dated May 29, 2003, Dr. Welch indicated that appellant could not engage in prolonged standing and, in a June 12, 2003 note, she stated that she could only perform a "sit down job."⁵

By decision dated September 8, 2003, the Office denied appellant's claim on the grounds that she did not establish any compensable employment factors.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation

⁴ The record contains a January 23, 2003 document which memorializes this denial of appellant's request for light-duty work.

⁵ The record also contains a February 17, 2003 report in which Dr. Welch indicated that appellant had osteoarthritis of the knees due to a January 25, 2002 injury and noted that she could not stand for long periods.

Act.⁶ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁸ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁹

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁰ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹¹

ANALYSIS

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated September 8, 2003, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged multiple instances of harassment by Ms. Bradley, the manager of distribution. She made several allegations regarding a meeting which occurred on January 15, 2003. In particular, appellant alleged that during the meeting Ms. Bradley used a hostile tone of voice in asking, "What is this?" when she placed a tray on the floor near her desk and then shouted at her in a demeaning manner when she asked her why she was late and why she had not given notice she would be late. Appellant also alleged that on October 25, 2002

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁹ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁰ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹¹ *Id.*

Ms. Bradley made sarcastic and vulgar comments to her, which included calling her a “smart ass.” She generally alleged that, between July 2002 and January 2003, Ms. Bradley subjected her to profanity and verbal abuse and ridiculed her job performance, particularly during telephone conversations when she requested that additional staff be provided.

To the extent that disputes and incidents alleged as constituting harassment by supervisors are established as occurring and arising from appellant’s performance of her regular duties, these could constitute employment factors.¹² However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.¹³ In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that she was harassed by Ms. Bradley.¹⁴ Appellant alleged that Ms. Bradley made statements and engaged in actions which she believed constituted harassment, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁵

Moreover, the record contains accounts of the January 15, 2003 meeting which vary greatly from the account provided by appellant. Both Ms. Bradley and Ms. Mitchell, another supervisor, provided statements which indicate that appellant adopted a hostile demeanor and tone of speech from the beginning of the meeting. They indicated that appellant threw a tray on the floor and replied in a rude tone of voice, “Money” when asked about its contents. Ms. Mitchell noted that when Ms. Bradley asked appellant on January 15, 2003 why she was late for the meeting, she responded in a rude tone of voice, “Well, I [a]m here now” and that when she was told she requested too much personal leave, she replied, “Is that right?” in a similar tone of voice. Appellant alleged other instances of harassment by Ms. Bradley over a period of time, but these were only presented in general terms. She was provided with an opportunity to provide more detail and supporting documentation, but she failed to do so in the time allotted. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant claimed that Ms. Bradley unfairly criticized her by indicating that she requested too much personal leave and did not have adequate interpersonal skills. She also suggested that the January 15, 2003 meeting constituted an improper evaluation of her job performance in that she was not given a chance to prepare for the meeting. Appellant claimed that a job transfer which was scheduled to take place effective January 27, 2003 was improper because it required work duties which were beyond the restrictions imposed by an April 29, 2002 employment injury.¹⁶ She generally criticized Ms. Bradley’s manner of supervision, alleging

¹² *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁴ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁵ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁶ The record reveals that appellant sustained a work-related left knee strain on April 29, 2002.

that she did not give her adequate instructions and supervision to do her work and that she did not allow her to attend meetings with other employees. Appellant alleged that Ms. Bradley often left her to make administrative decisions on her own and then unfairly criticized her for her decisions.

Regarding appellant's allegations that the employing establishment improperly assigned work duties, incorrectly proposed a transfer to an unsuitable job, mishandled a performance evaluation, and engaged in improper criticism, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁷ Although the assignment of work duties, the handling of transfer actions and the implementation of performance evaluations and disciplinary actions are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.¹⁸ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁹

Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. In particular regard to appellant's allegations regarding the job transfer, it should be noted that this job transfer did not actually take place before appellant stopped work on January 15, 2003. There is no evidence that the employing establishment committed error or abuse in proposing this job transfer. Appellant alleged that she would not be able to physically perform the job, but this mere assertion would not be sufficient to show that the employing establishment's action was improper.²⁰ Moreover, there is no evidence, such as the findings of a grievance, that Ms. Bradley improperly handled performance evaluations or criticism of appellant's work. With regard to appellant's general complaints that Ms. Bradley was not adequately attentive in her supervision, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.²¹ Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

¹⁷ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁸ *Id.*

¹⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²⁰ The record contains several brief notes, dated in early to mid 2003, in which attending physicians indicated that appellant had arthritis in both knees and could not stand for extended periods. These notes do not contain any significant findings on examination or a clear opinion that appellant would not have been able to perform the position which would have started on January 27, 2003.

²¹ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

CONCLUSION

The Board finds that appellant did not meet burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 8, 2003 is affirmed.

Issued: March 11, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member